

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 2119 – HB 2310

April 18, 2018

**SUMMARY OF ORIGINAL BILL:** Authorizes a governing body of a county or municipality to advertise on the official website for the county or municipality its intent to exceed the certified property tax rate.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

**SUMMARY OF AMENDMENT (017619):** Deletes all language after the enacting clause.

Decouples Tennessee from provisions of the Tax Cut and Jobs Act of 2017 (TCJA) which (a) limit the amount of interest allowed as a deduction to 30 percent of the adjusted taxable income, and replaces it with the provisions of § 163(j) of the Internal Revenue Code of 1986, as it existed and applied prior to enactment of the TCJA, and (b) include certain contributions to capital in Federal gross income, and replaces it with the § 118 of the Internal Revenue Code, as it existed and applied prior to enactment of the TCJA. The substitution of “(a)” shall become effective for tax years beginning on or after January 1, 2020, and the substitution of “(b)” shall become effective for tax periods beginning on or after January 1, 2017.

Authorizes a unit of local government receiving tax information under Tenn. Code Ann. § 67-4-1701(d) to disclose to a contractor or consultant the name, address, and situs of one or more taxpayers for the purpose of ascertaining whether allocations of state and local taxes are being distributed to the correct unit of local government. Establishes that such tax information shall not include the taxpayer’s tax returns, receipts, income, tax liability, tax payments, or other tax information. Prohibits a contractor or consultant of a unit of local government who receives such information from disclosing the information to any other person and establishes that such individual shall be subject to all the penalties and restrictions applicable to an officer or employee of the state under Tenn. Code Ann. § 67-1-1709.

Authorize municipalities which receive an allocation of state sales tax revenue derived from the state sales tax imposed on the sale or use of goods, products and services within courthouse square revitalization zones to continue receiving such allocation after FY22-23, and through FY27-28.

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For the purpose of increasing compliance with the tax laws administered by the Department of Revenue (DOR), authorizes the DOR to contract with a third party for the provision of advice or recommendation on delinquent or deficient sales and use taxes. Such advice or recommendation may include the recommendation for taxpayer audit selection and the amount of any assessment.

Establishes that any advice or recommendation received shall be advisory only, and the amount of any proposed assessment issued directly or indirectly as a result of such consultation shall be determined solely by the DOR.

Prohibits any such contract from containing any provisions whereby a person shall be paid a percentage basis, or on any basis whereby the compensation under the contract is dependent or conditioned upon increasing or reducing revenues assessed or collected by the DOR.

Any such contract or solicitation for such contract is subject to the rules, policies, and procedures of the Central Procurement Office and the Procurement Commission.

Any contract entered into as a result of the bill as amended shall terminate no later than July 1, 2019.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Decrease State Revenue – \$2,259,000/Each Year FY23-24 through FY27-28**

**Increase Local Revenue – \$2,259,000/Each Year FY23-24 through FY27-28**

**Forgone State Revenue - \$200,000/FY17-18**

**\$800,000/FY18-19**

**\$42,900,000/FY19-20**

**Exceeds \$112,400,000/FY20-21 and Subsequent Years**

**Other Fiscal Impact – The estimated fiscal impact cannot be determined due to the uncertainty of the request for proposal process the Department of Revenue will follow in awarding the proposed contract. Further, the extent and timing of potential increases in state tax revenue collections cannot be reasonably determined because such impact is dependent upon future unknown factors.**

Assumptions for the bill as amended:

- The bill as amended will result in a net decrease in excise tax revenue, beginning in FY17-18; however, the decrease in revenue will be from an otherwise expanded tax base expected as the result of the TCJA; as a result, such revenue growth has not yet been collected or realized.

- Due to the fact that the revenue has never been collected, the otherwise decrease in state revenue estimated as a result of the bill as amended is considered forgone revenue, rather than decreased state revenue.
- The following figures represent the estimated forgone state excise tax revenue per fiscal year:
  - FY17-18: \$200,000;
  - FY18-19: \$800,000;
  - FY19-20: \$42,900,000; and
  - FY20-21 and subsequent years: Exceeds \$112,400,000.
- Calculations used in determining this fiscal analysis have been omitted for the purpose of brevity. However, these calculations are on file with the Fiscal Review Committee staff and can be provided upon request.
- Under current law, pursuant to Tenn. Code Ann. § 67-5-1702, a governing body of a county or municipality is required to advertise its intent to exceed the certificated property tax rate in a newspaper of general circulation and submit an affidavit of the publication to the State Board of Equalization. After a public hearing, the governing body is authorized to adopt a resolution or ordinance levying a tax rate in excess of the certified rate.
- Any impact to state or local government resulting from authorizing the governing body to also advertise its intent to exceed the certified property tax rate on the entity's official website is estimated to be not significant.
- Pursuant to Tenn. Code Ann. § 67-1-1704(d), tax returns and tax information may be disclosed, upon request in writing, to duly authorized officials of a unit of local government for the purpose of ascertaining whether proper local taxes or the business tax are being paid.
- In addition, pursuant to Public Chapter 705 of 2016, tax information may also be disclosed to duly authorized officials of a unit of local government to the extent necessary to ascertain whether allocations from state levied taxes are being distributed to the correct unit of local government, provided that such information shall not include the taxpayer's returns, receipts, income, tax liability, tax payments, or other financial information.
- The proposed legislation authorizes such information disclosed to authorized local officials for the purposes of ascertaining whether allocations from state levied taxes are being distributed to correct units of local government to also be disclosed to contractors or consultants of local government units for the purpose of ascertaining whether allocations of state and local taxes are being distributed correctly.
- Such authorization will not impact the total amount of state or local taxes collected or the amount of state taxes distributed to the local government.
- Pursuant to Tenn. Code Ann. § 67-1-1709, it is a Class E felony to: disclose to any person, except as authorized by law, any tax return or tax information; offer any item of material value in exchange for any tax return or tax information and to receive as a result of such solicitation any such tax return or tax information; and willfully inspect any tax return or tax information, except when an employee has a good faith and objectively reasonable basis for believing such inspection is in furtherance of the employee's duties or responsibilities.

- It is assumed that authorizing contractors and consultants of local government units to receive the specified tax information and subjecting such individuals to all the penalties and restrictions applicable to an officer or employee of the state under Tenn. Code Ann. § 67-1-1709 will not result in a significant number of Class E felony offenses. As a result, any impact on state or local expenditures is estimated to be not significant.
- Under current law, pursuant to Tenn. Code Ann. § 67-5-1702, a governing body of a county or municipality is required to advertise its intent to exceed the certificated property tax rate in a newspaper of general circulation and submit an affidavit of the publication to the State Board of Equalization. After a public hearing, the governing body is authorized to adopt a resolution or ordinance levying a tax rate in excess of the certified rate.
- Any impact to state or local government resulting from authorizing the governing body to also advertise its intent to exceed the certified property tax rate on the entity's official website is estimated to be not significant.
- Based on information provided by the Department of Revenue, the average amount of state sales tax revenue derived from the state sales tax imposed on the sale or use of goods, products and services within the courthouse square revitalization zones that has been allocated to municipalities in the last four fiscal years is estimated to be approximately \$2,259,000.
- Under current law, pursuant to Tenn. Code Ann. § 67-6-103(h)(2), such allocation of revenue shall continue until June 30, 2023. The proposed legislation allows the allocation to continue through June 30, 2028. Therefore, beginning in FY23-24 and continuing through FY27-28, there will be a recurring decrease in state revenue and an equivalent recurring increase in local revenue of approximately \$2,259,000.
- Under current law, pursuant to Tenn. Code Ann. § 67-5-1702, a governing body of a county or municipality is required to advertise its intent to exceed the certificated property tax rate in a newspaper of general circulation and submit an affidavit of the publication to the State Board of Equalization. After a public hearing, the governing body is authorized to adopt a resolution or ordinance levying a tax rate in excess of the certified rate.
- Any impact to state or local government resulting from authorizing the governing body to also advertise its intent to exceed the certified property tax rate on the entity's official website is estimated to be not significant.
- Authorizes the DOR to enter into a contract for the purpose of increasing compliance with the tax laws administered by the Department.
- Due to the unknown nature of future events, any expenses incurred as result of the DOR entering into a contract with a third party cannot be determined with certainty due to the request for proposal (RFP) process the all state departments follow. This contract is required to terminate no later than July 1, 2019; therefore, this legislation is estimated to result in a one-time increase in state expenditures of an unknown amount.
- It is unclear as to the extent that tax revenue collections will increase as a direct result of the DOR contracting with a third party vendor for increasing taxpayer compliance.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee" followed by the letters "RNC" in a smaller, slightly separate script.

Krista M. Lee, Executive Director

/jdb